

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Case No. 1:11-CR-31-2

UNITED STATES OF AMERICA	)	
	)	MOTION FOR DOWNWARD
v.	)	DEPARTURE OR VARIANCE
	)	
	)	
MARCELO ALVAREZ	)	

The defendant, Marcelo Alvarez, by and through counsel, hereby moves the court to Downwardly Depart from the Sentencing Guideline range as determined in the Presentence Report dated April 29, 2011 and respectfully shows unto the Court the following in support of said Motion.

Alvino Ray Wilson is a 32 year old young man who has always lived in North Carolina and has always been close to his family. He has made some serious mistakes, particularly as a teenager. These mistakes have cost Mr. Wilson part of his life and now threaten to extend his loss of freedom in this matter. We respectfully suggest that the criminal history shown in the Presentence Report is overstated.

Mr. Wilson committed some reckless and violent crimes when he was 16 and 17 years old. He served an active sentence and has committed no other felonies before the instant offenses. He has been found guilty of two driving while impaired offenses in 2009. The guidelines score seven points for these offenses. We believe that these points, while correctly scored, do not represent the true character of this defendant.

The case of *United States v. Booker*, 543 U.S. 220 (2005), declared the Sentencing Guidelines to be advisory, rather than mandatory. The Court is not only authorized to consider all facts, but rather is required to consider all facts before it, and to form an

appropriate sentence therefrom. In the case before the Court, the defendant presents facts that warrant deeper consideration. First, the only felonies were as a teenager, before the age of majority. He has paid for these offenses.

Second, the two DWI offenses occurred near the same time in 2009, and again the defendant has served his sentences for these offenses. These offenses shed light on the underlying problem. Mr. Wilson suffers some problems that involve him with substance abuse. He was involved with alcohol and cocaine. He has had a problem with reentry into free society. Incarceration at an early age surely did not allow him to develop the skills a young man needs to develop at that age. Most likely the opposite is true. This defendant admits that he has substance abuse problems and seeks treatment and a chance to succeed.

Finally, in the instant case the defendant contends and states to the Court that he was trying to not be involved in the drug trade, but he was. The government's two confidential sources contacted Mr. Wilson and specifically requested one ounce quantities of cocaine. Although he made these deals he was not out selling this weight on his own. These offense took place in April and June 2009. Mr. Wilson was arrested in December 2010. There were no offenses during this period because this defendant was not relying on the sale of drugs for his livelihood.

Based on the foregoing the defendant respectfully prays the Court to downwardly depart from the Guidelines or vary from said recommendations. We suggest that the appropriate sentencing range should be 51-63 months. This is based on reducing the Criminal History Category from IV to II in Offense Level 23. We believe that the objectives of 18 U.S.C. Sec. 3553 and the Sentencing Guidelines are better served by these considerations and respectfully submit them to the Court.

Respectfully submitted, this the 12th day of July, 2011.

/s/ Steven E. Hight

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### **CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing Motion was served  
this date by filing electronically by means of the CM/ECF system presently in operation  
by this Court, which CM/ECF system will automatically notify the following:

Sandra Hairston  
Assistant U.S. Attorney

This the 12<sup>th</sup> day of July, 2011.

/s/ Steven E. Hight

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